

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL W. MACHUTA,

Plaintiff/Counter-Defendant-
Appellee,

v

CONSTANCE J. MACHUTA,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

May 20, 2008

No. 274860

Isabella Circuit Court

LC No. 05-003721-DM

Before: Wilder, P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Defendant Constance Machuta appeals as of right the circuit court order denying her motion to set aside the parties' mediation agreement on the ground of intentional misrepresentation. We affirm.

I. Basic Facts And Procedural History

The parties were married in August 1981, and lived together as husband and wife until a few days before Michael Machuta filed his complaint for divorce in mid-January 2005. The following day, Constance Machuta filed a countercomplaint for divorce. During the divorce proceeding, the parties engaged in discovery. In his answers to interrogatories, Michael Machuta denied owning any mineral rights. He also indicated that during the parties' marriage he was engaged in business enterprises with only the following closely held corporations: Mid State Oil Tools, Inc., Mid State Fishing and Rental Tools, Mid State Employment Services, L.L.C., and Mid State Oil Tools-Canada. Michael Machuta further responded as follows to the following questions:

Q69. Does any person, firm or business entity hold any property for your benefit?

ANSWER: No.

* * *

Q79. Are you now or have you been at any time a member of any partnership?

ANSWER: No.

* * *

Q90. Have you disposed of any stock or interest in any such [closely held] corporation during the past five (5) years? . . .

ANSWER: Yes, Mid State Employment Services.

Q91. Do you have any option or agreement to acquire additional stock or interest in any corporation? . . .

ANSWER: No.

* * *

Q97. Do you have any interest in any kind of business enterprise, proprietorship, limited or general partnership, association or joint venture, excluding those requested in the questions above? . . .

ANSWER: No.

In late June 2006, the parties executed a mediation agreement that resolved several issues, including division of their marital property. In mid-August 2006, Michael Machuta filed a motion for entry of his proposed judgment of divorce, incorporating the mediation agreement. Constance Machuta opposed the motion on the basis that she was fraudulently induced to sign the agreement. She contended that during discovery Michael Machuta did not disclose his de facto interest in an oil and gas exploration company known as Triple M Exploration, L.L.C. (Triple M) and an oil drilling operation known as the "Vernon Prospect." Constance Machuta maintained that she learned of Michael Machuta's de facto interest in the company when she talked to Michael Machuta's daughter from a previous marriage, Salina Thum, after signing the mediation agreement. Constance Machuta thus argued that the mediation agreement was void because it was entered into as a result of fraud.

In September 2006, Constance Machuta filed a motion to set aside the mediation agreement based on fraud. She argued that in addition to failing to disclose his de facto interest in Triple M in his answers to interrogatories, Michael Machuta also failed to disclose such interest during his deposition. Constance Machuta contended that Michael Machuta was specifically asked on two occasions to disclose information regarding Triple M, but he led defense counsel to believe that the entity had never been set up, that he did not know what the name of the company stood for, and that he did not know the identities of the principals of the company. Constance Machuta maintained that, contrary to Michael Machuta's assertions, he was involved with Triple M as early as October 2005 for the purpose of developing an oil and gas well, and he was responsible for the creation of the entity. Constance Machuta argued that Michael Machuta's actions constituted silent fraud that induced her to sign the mediation agreement.

In response, Michael Machuta denied ever having an ownership interest in Triple M and argued that the mediation agreement accurately evidenced the parties' agreement. Michael Machuta contended that even if the court determined that he did conceal an ownership interest in Triple M, the appropriate remedy would be an equitable division of that asset and not setting

aside the entire agreement. Michael Machuta requested that the trial court enter his proposed judgment of divorce incorporating the mediation agreement.

In mid-September 2006, the trial court held an evidentiary hearing on Constance Machuta's motion. Thum testified that in late October or early November 2005, Michael Machuta approached her regarding the prospect of a new business entity for the purpose of drilling oil. He wanted her to be involved in the business so that she, her daughter, and her three half-siblings, Michael Machuta's and Constance Machuta's triplet children, would have an income to support them if something ever happened to Michael Machuta. According to Thum, Michael Machuta wanted the business to be set up in her name and told her that if it was set up in his name, Constance Machuta would receive half of it because their divorce was not yet final. Michael Machuta also told her that he would "make sure that everything was taken care of" and that he would do the day-to-day work. He told her that his attorney, David Gilbert, would prepare the paperwork and call her when it was ready to be signed.

Thereafter, Tom Dunn, Gilbert's private investigator, contacted Thum and told her that the paperwork was ready for her to sign at Gilbert's office. In mid-November 2005, she signed the papers, including the articles of organization for the limited liability company, "Triple M Exploration, L.L.C." She paid a \$50 filing fee at that time. Thum testified that Michael Machuta told her to use Triple M as the name of the company and that the name referred to his and Constance Machuta's triplet children. An operating agreement was also prepared listing Thum's name and the name of Michael Machuta's secretary, Patricia Ann Wischmeyer, as members of the company. When Thum asked why Wischmeyer's name was listed on the document, Dunn told her not to worry about it. (Michael Machuta testified that at the time of the evidentiary hearing, Wischmeyer was also his live-in girlfriend.) Thum never participated in the day-to-day operation of the company and had no knowledge of any well permit. On the same day or shortly thereafter, Dunn handed her an "SS-4" form or an "Application for Employer Identification Number" that purported to contain her signature. Because she never signed the form, she questioned the signature on the form, and Dunn replied that he had signed her name.

In late June 2006, Constance Machuta asked Thum if she knew anything about Triple M, and Thum replied that she owned Triple M. Constance Machuta believed that a company called Triple M was pertinent to her divorce action because Michael Machuta told her near the end of 2004 that he had created a company named Triple M after their triplets to develop oil and gas. According to Constance Machuta, Michael Machuta told her that the company was in both of their names. Constance Machuta understood that funds received from a home equity loan were expended to test their land for gas or oil. At Michael Machuta's direction, she signed personal checks that she was told were necessary for Triple M. She did not hear anything further regarding Triple M after December 2004.

After the parties filed for divorce, Constance Machuta did not receive any paperwork from Michael Machuta regarding Triple M. She testified that Michael Machuta's answers to questions during his deposition led her to believe that the company did not exist. She discovered that it did exist when talking to Thum after she had signed the mediation agreement.

Robert Reynolds, a geologist, testified that Michael Machuta contacted him in February 2005 to provide services regarding a well, named "Strouse," numbered "1-28." The Strouse well was one of 16 potential wells in the Vernon Prospect. Reynolds acknowledged receiving checks

from Michael Machuta and Constance Machuta regarding work performed on their property in 2004, but testified that those checks were for the "Freeman Five Prospect," not the Vernon Prospect. With respect to the Vernon Prospect, Reynolds completed geochemistry work for six months following February 2005. He never billed Michael Machuta for the work because the agreement was that he would complete the work in exchange for an interest in the well. In September 2005, Michael Machuta gave him a check for \$25,000 to cover land-leasing costs. At the end of 2005, Reynolds drafted a prospectus for potential investors of the Vernon Prospect on which he listed Triple M along with his own address because he did not know which address to use for Michael Machuta. Reynolds understood that Triple M and Michael Machuta were synonymous.

Toward the end of 2005, Michael Machuta told Reynolds that he did not wish to be involved in the prospect any longer because he was getting divorced and was no longer in a financial position to be actively involved in it. In early 2006, Michael Machuta introduced Reynolds to Dunn, who took over the project for Michael Machuta. Reynolds understood that "Black Diamond Trading" would take over Triple M's position as the operator of the well. Dunn then told Reynolds to continue using Triple M as the operator but indicated that the new Triple M to which he referred was a Wyoming limited liability corporation. Reynolds thus listed "Triple M" as the applicant on an application for a permit to drill that he filed with the state of Michigan in March 2006. Dunn's post office box located in Beaverton, Michigan, was listed as the applicant's address. According to Reynolds, he was under the impression that Triple M of Wyoming had already been formed. Reynolds denied ever having contact with Thum. Michael Machuta's company, Mid State Oil Tools, was hired to look after the well, and Michael Machuta was present during a portion of the drilling. Ultimately, it was discovered that the well was dry. Reynolds conducted some additional geological surveying to determine if the well had "any life to it," but determined that it did not.

Reynolds acknowledged that Michael Machuta was listed as a drilling supervisor of the well on a document entitled "Drilling Procedure for Test Well." Reynolds testified that the decision to list Michael Machuta as the drilling supervisor was "in some ways" his decision. Because the well was dry, Reynolds testified that it is "probably quite true" that the formation will never be capable of producing oil or gas. According to Reynolds, Michael Machuta had no ownership interest in the well.

Dunn testified that he is the chief assistant manager of Triple M of Wyoming. He denied ever having met Thum. He testified that although it was possible that he assisted in establishing Triple M while he worked for Gilbert, he had no independent recollection of doing so. Dunn did not recall hearing of a Triple M company in Michigan with the same name as his Wyoming company. According to Dunn, Triple M Foundation appointed him chief assistant manager of Triple M of Wyoming. Triple M Foundation is a Panamanian foundation established by Dunn's wife in 1997 for the posterity of their triplet children. Triple M Foundation and two separate trusts are members of Triple M of Wyoming. Dunn heard of the Vernon Prospect from Michael Machuta in November or December 2005, and considered it a good business opportunity. Michael Machuta told him that he could not proceed with the prospect because of his divorce. Dunn told Michael Machuta that he could probably provide financing for the prospect. According to Dunn, Michael Machuta did not request any payment for handing over the business opportunity to Dunn. Dunn and Michael Machuta agreed, however, that one of Michael

Machuta's companies would provide services as required for the drilling of the well. Michael Machuta did not have a working interest in the well.

When the trial court asked Dunn how he came to use the name Triple M, Dunn responded that he had met with Reynolds regarding the prospect and Reynolds indicated that he had used the name Triple M previously on the paperwork. According to Dunn, Reynolds suggested that they continue to use that name instead of changing it to "Black Diamond." Dunn admitted that Triple M of Wyoming did not actually exist as an entity until mid-June 2006, after much of the paperwork had already been filed regarding the Vernon Prospect.

Michael Machuta testified that he became involved in the Vernon Prospect after Reynolds brought it to his attention in late 2004 or early 2005. He eventually had to discontinue his involvement because of his divorce. He did not invest any money in the prospect and did not pay any money to Reynolds. John Keathley, his partner with respect to Mid State Oil Tools, acquired oil and gas leases regarding the prospect. In September 2005, Keathley gave Reynolds a \$25,000 check from Keathley's business, Central Michigan Cementing Services, to pay for land leasing costs. Michael Machuta denied having an interest in that business at that time.

Michael Machuta admitted having a conversation with Thum about setting up a business to provide for Thum and her step-siblings, but the discussions never involved drilling on the Strouse property. Michael Machuta denied asking Gilbert to assist Thum in preparing articles of organization for a company known as Triple M. Michael Machuta also denied any knowledge of Thum hiring Gilbert to create Triple M. According to Michael Machuta, Reynolds used the name Triple M because Reynolds had used that name previously regarding drilling on Michael Machuta and Constance Machuta's property and carried the name over to the Vernon Prospect.

Michael Machuta testified that he told Reynolds that he no longer wanted to be involved in the prospect in May or June 2005. After introducing Reynolds and Dunn to each other in January 2006, Michael Machuta had no further involvement in the prospect other than providing services regarding the drilling of the well. He denied having an ownership interest in Triple M of Wyoming or the members of that entity. He further denied having committed fraud or misrepresentation regarding the Vernon Prospect and testified that he fully and accurately answered Constance Machuta's discovery requests. He acknowledged that his company, Mid State Oil Tools, charged Triple M of Wyoming approximately \$20,000 to \$25,000 for the company's services regarding the prospect.

In its findings of fact and conclusions of law, the trial court stated that the evidence presented many "unanswered questions as to why certain things were done a certain way." The trial court found Thum's testimony credible regarding the formation of Triple M of Michigan, but opined that the fact that Michael Machuta may have wanted Thum to put the corporation in her name to support her child and Michael Machuta's triplet children was not fraudulent. The trial court also opined that "it seem[ed] a little strange" that Triple M of Wyoming would use the name "Triple M Exploration, L.L.C." because the paperwork already had that name on it, but the trial court concluded that it had no solid evidence showing that the decision regarding the name of the entity did not occur that way. The trial court ultimately opined that it could not "put [its] thumb on anything that says yes there is fraud that's been proven in—in this matter." The trial court determined that, even considering the circumstantial evidence, all that was shown was that Michael Machuta started the project and then turned it over to Dunn, who set up Triple M of

Wyoming. The trial court stated that Michael Machuta could have been more forthcoming in his answers to interrogatories, but that his failure to do so did not rise to the level of fraud. Therefore, the trial court entered a written order denying Constance Machuta's motion. On the same day, the trial court entered a judgment of divorce, incorporating the mediation agreement. Constance Machuta now appeals.

II. Validity Of Mediation Agreement

A. Standard Of Review

Constance Machuta argues that the parties' mediation agreement should be set aside because Michael Machuta fraudulently induced her to enter into the agreement by misrepresenting his interest in Triple M.

We review a trial court's factual findings following an evidentiary hearing for clear error.¹ Clear error exists when, although there exists evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made.² Further, we will not reverse a trial court's finding regarding the validity of a party's consent to a settlement agreement absent an abuse of discretion.³ An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes.⁴

B. Applicable Legal Principles

“It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged.”⁵ This rule applies regardless whether the property settlement has yet been formally entered as part of the divorce judgment and is consistent with the notion that “[a]bsent fraud, coercion, or duress, the adults in the marriage have the right and the freedom to decide what is a fair and appropriate division of the marital assets”⁶ A property settlement agreement is subject to the rules and principles governing contracts in general.⁷

¹ *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998).

² *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003).

³ *Lentz v Lentz*, 271 Mich App 465, 474-475; 721 NW2d 861 (2006).

⁴ *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

⁵ *Lentz*, *supra* at 474, quoting *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990).

⁶ *Id.* at 472, 474.

⁷ *Id.* at 472-473, 478.

To establish fraudulent misrepresentation, a plaintiff is required to show that: (1) the defendant made a material representation, (2) that representation was false, (3) that the defendant either knew or should have known that the representation was false, (4) that the defendant made the representation with the intent that the plaintiff rely on it, and (5) that the plaintiff acted on the representation and incurred damages as a result.⁸

C. Analysis

As noted above, the evidence presented at the evidentiary hearing showed that Michael Machuta's discovery responses were, at a minimum, misleading at the time that they were made. According to the testimony of Michael Machuta's daughter, Salina Thum, Michael Machuta and his attorney assisted her in establishing Triple M for the purpose of drilling oil. Michael Machuta told her that he would take care of the paperwork and the day-to-day operation of the company, but that it should be in Thum's name so that Constance Machuta would not receive half of the company when the parties' divorce was final. Thereafter, Thomas Dunn signed Thum's name to one of the necessary documents without her permission, and Michael Machuta's secretary/live-in girlfriend was listed as a member of Triple M without Thum's knowledge or permission. Thum signed the paperwork regarding Triple M in November 2005.

The events following the creation of Triple M are, at the very least, suspicious. The evidence showed that Michael Machuta gave his interest in the Vernon Prospect to Dunn for free, with the only condition being that one of Michael Machuta's companies would provide services for drilling the well. Thereafter, a Wyoming corporation with the same name as Triple M was established, but only after much of the paperwork on the project had already been filed. According to Michael Machuta's testimony, he introduced Dunn to Robert Reynolds, a geologist who was working on the project, in January 2006, and had no further involvement in the prospect afterward. Therefore, Michael Machuta was involved in the prospect until January 2006, which included the time that he responded to Constance Machuta's interrogatories and was deposed.

Although the evidence tends to show that Michael Machuta *may* have misrepresented his interest in Triple M and the Vernon Prospect, it is undisputed on the record before us that Constance Machuta suffered no injury. The uncontroverted evidence on the record before us showed that the well was dry. Therefore, the prospect proved to be fruitless. Accordingly, even if Michael Machuta misrepresented his interest in the prospect, Constance Machuta did not incur damages as a result of such misrepresentation. Having failed to establish on the record before us that she suffered damages, Constance Machuta's argument for setting aside the mediation agreement fails.⁹

Affirmed.

/s/ Kurtis T. Wilder

/s/ William C. Whitbeck

⁸ *Foreman v Foreman*, 266 Mich App 132, 141; 701 NW2d 167 (2005).

⁹ *Id.*